

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**PROGRESSIVE NORTHERN  
INSURANCE COMPANY,  
Plaintiff,**

**v.**

**JUSTINE COLEMAN, JOSEPH H.  
COLEMAN, JR., and IVETTE  
PIZARRO,  
Defendants.**

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**NO.: 02-4026**

**PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF PLAINTIFF**

**Findings of Fact**

1. On May 19, 2000, at approximately 2:30 p.m., Justine Coleman was operating a 1996 Subaru Legacy in a southerly direction on North Fifth Street, Reading, Berks County, Pennsylvania.

2. At the same time and place, Joseph H. Coleman, Jr., was operating a 1992 Ford Ranger pickup truck, also in a southerly direction on North Fifth Street.

3. Ivette Pizarro was a passenger in the pickup truck being operated by Joseph H. Coleman, Jr.

4. Joseph and Justine Coleman were originally married on July 7, 1977.

5. In approximately March of 2000, Justine and Joseph Coleman separated.

6. At the time of the accident, Justine Coleman was aware that Ivette Pizarro and Joseph Coleman were having a sexual affair. In approximately April of 2000, Justine Coleman consulted with an attorney, James Scher, Esquire, regarding the filing of a divorce.

7. On the date of the accident, Justine Coleman was employed at the Mount Penn post office. She was on her lunch break at the time of the accident.

8. Justine Coleman was attempting to get the attention of Joseph Coleman in order to have him stop and ask him about signing divorce papers.

9. Justine Coleman's vehicle struck the Joseph Coleman vehicle on at least two occasions.

10. As a result of the accident, Joseph H. Coleman, Jr. and Ivette Pizarro sustained various personal injuries and have made claims against Justine Coleman.

11. At the time of the accident, Justine Coleman maintained an automobile insurance policy, policy number 5564591-1, with Plaintiff, Progressive Northern Insurance Company.

12. The Progressive policy provides liability protection generally as follows:

Subject to the Limits of Liability, if **you** pay a premium for **bodily injury** liability coverage, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury** for which an **insured person** becomes legally responsible because of an **accident** arising out of the ownership, maintenance, or use of a **vehicle**.

*See Policy at Page 5.*

13. The policy defines "accident" as "a sudden, unexpected, and unintended occurrence". *See Policy at Page 2.*

14. In addition, the Progressive policy contains the following exclusion:

Coverage under this Part 1 [liability], including **our** duty to defend, does not apply to: . . .

9. **bodily injury** or **property damage** caused by an intentional act of an **insured person** or at the direction of an **insured person**; . . .

*See Policy at Pages 7-8.*

**Conclusions of Law**

1. The incident that occurred on May 19, 2000, was not an “accident” as that term is defined in the Progressive policy.
2. The conduct of Justine Coleman was an “intentional act” as that term is used in the Progressive policy.
3. Justine Coleman is not entitled to the Defendant or indemnified by Progressive Northern Insurance Company for any claims arising out of the May 19, 2000 automobile accident.
4. Progressive Northern Insurance Company has no obligation to defend or indemnify Justine Coleman for any of the claims arising out of the May 19, 2000 incident.

Respectfully submitted,

NEALON & GOVER, P.C.

By: s/James G. Nealon, III  
James G. Nealon, III, Esquire  
I.D. #: 46457  
2411 North Front Street  
Harrisburg, PA 17110  
717/232-9900

Date: August 15, 2003

**CERTIFICATE OF SERVICE**

**AND NOW**, this 15<sup>th</sup> day of August, 2003, I hereby certify that I have served the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW on the following by facsimile transmission addressed to:

Richard T. Kupersmith, Esquire  
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s/James G. Nealon, III, Esquire  
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